IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9508 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DALIT ATYACHAR NIVARAN SANGH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9508 of 2004

MR MUKTESH V PATEL for Petitioner No. 1

MR UDAY R.BHATT, AGP for Respondent No. 1-7

NOTICE SERVED for Respondent No. 8-15

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 03/05/2005

CAV JUDGEMENT

(Per : HON'BLE MS.JUSTICE H.N.DEVANI)

1. By way of the present petition which has been moved by way of a Public Interest Litigation, the petitioner Dalit Atyachar Nivaran Sangh (proposed) (herein after referred to as the 'petitioner Sangh') through its Chairman, seeks the following reliefs:

"(a) To admit the petition.

(b) To issue a Writ of mandamus or appropriate writ or direction against the respondent to solve the problems of the petitioner and Valmiki Parivars.

(c) To order the Respondent No.1 to 3 to pay Cashdol to the Hijarati - Migrated persons of village Kotha from dated 5-10-2001 to onwards.

(d) To pay the damage of the Victims person as per the scheme of government as demanded in Para No.8 of this petition.

(e) To provide occupation and accommodation to Hijarati - Migrated persons at Gandhinagar.

(f) To provide facility for education to the children of Hijarati - Migrated persons.

(g) To take strict actions u/s 4 of the SC/ST Prevention of Atrocity Act against the respondents No.1 to 8 for their negligence.

(h) To pass strictures against the respondents No.2 to 8 for their negligence towards their duty.

(i) To pass order against respondents No.9 to 15 for their misdeeds and harassment against the Hijarati - Migrated persons as per the provisions of Atrocity Act, 1989.

(j) To grant any relief deemed fit in the circumstances."

2. Upon perusal of the averments made in the petition, it is seen that the term petitioner/petitioners is used mostly in the context of Chairman of the petitioner Sangh namely Sureshbhai, his family members and close relatives (hereinafter for the sake of convenience referred to as 'the petitioners') and not for

the petitioner Sangh. Though the petition is styled as a public interest litigation, as the record reveals, it is not a public interest litigation, but only for the benefit of the petitioner and some of his near relatives.

3. The petitioner Sangh is only a proposed association. It is not shown, neither averred, that it has come into existence - is registered with appropriate authority in accordance with law. The settled legal position is : "When a number of individuals are affected by an official act, they can, ordinarily, bring a legal proceeding to challenge that only if all such persons join in the proceedings by name, except where the law confers upon them a legal personality as a collective body. An unincorporated association, which has no legal personality, cannot sue or be sued in its own name. Only the members of such society jointly can bring a legal proceedings." (Kamdar Ladat Samiti of Nanikram Shobraj Mills Ltd. & Asso. Units v. Nanikram Shobhraj Mills Ltd. & ors., reported in 2005 (1) GLR 166, para 13).

The petition is, therefore, liable to be rejected on this count alone.

4. It is stated in the petition that the Chairman is a native of village Kotha, Taluka: Kalol, District: Gandhinagar and belongs to the Valmiki Community. That the petitioners were residing in the said village, which has a population of about 5000 people belonging to different communities namely Patel, Prajapati, Rajput, Thakor, Raval, Vankar, Senama and Valmiki community. It is stated that majority of the population of the said village consists of people belonging to the Patel and Prajapati communities, who believe in untouchability and abhor persons belonging to the scheduled caste community. It is the case of the petitioners that earlier the people belonging to the Scheduled caste community were residing far away from the village, but now due to increase in the population of the village their houses have come closer to the houses of the Patels and Prajapatis. It is alleged that the Patels and Prajapatis forced the petitioners to vacate their residences threatening them that otherwise they would burn down their houses and murder them. That, the petitioners were afraid of the threats, but were not ready to leave their homes and hence, they made applications to the D.S.P., the Collector, the Home Minister the Chief Minister and even to the Governor of Gujarat, but the respondents being influential persons, no action was taken against them.

4.1 It is the case of the petitioners that faced with

the aforesaid situation, the petitioners were left with no alternative but to leave the village, hence on 3.6.2001 the petitioners left the village. That thereafter some wise people of the village rebuked the wrong doers and the petitioners were given assurances relying upon which they returned to the village on 8.6.2001. That a settlement was arrived at with the intervention of the Collector, Mamlatdar, D.S.P. and others. That upon their return to their residences, the petitioners' problems did not come to an end and that the harassment continued, hence they made applications to various authorities, but the problem still continues.

4.2 It is stated that the petitioners met the then Minister for Social Justice on 12.6.2001. That, on 17.9.2001 at about 1:00 p.m., the respondent (not named) beat up Sureshbhai, in pursuance of which the petitioners went to lodge a complaint at Nardipur and Kalol Taluka police stations, but their complaints were not recorded. It is the further case of the petitioners that thereafter the non SC/ST people of the village boycotted them in respect of their daily work. That one Rameshbhai Mangabhai, a resident of Gandhinagar provided the petitioners with their primary needs, but the strong headed people of the village threatened him and prevented him from supplying them with their primary needs, hence, the petitioners had no alternative but to leave the village as no action was taken by the concerned authorities. It is alleged that the administration conspired against the petitioners and filed a false complaint against Sureshbhai on 25.9.2001, at the Nardipur Police Station. Hence, the petitioners left the village on 4.10.2001 as the authorities did not provide them with any protection and the harassment continued. That, the petitioners started fasting at Upvas Bhoomi at Gandhinagar and submitted applications to various authorities but their problems were not solved. That, the respondents came to Gandhinagar and threatened them that if they did not stop their fast, they would be murdered. That, the petitioners drew the attention of the police, but no action was taken as the authorities were all supporting the respondents.

4.3 It is alleged that while the petitioners were at Gandhinagar, the house of one of the petitioners namely Amrutbhai Mangalbhai, situated at Kotha village was burnt down on 14.01.2002, but the police did not take immediate and necessary strict action, but recorded a false complaint and a false panchnama to help their opponents. It is also alleged that the house of Rameshbhai was demolished and looted before 20.7.2002 and the water tap,

temple and fence was damaged on 20.7.2002 and the house was burnt on 4.10.2003, however, the police did not take proper action. That, the house of Sureshbhai was demolished on 8.9.2002 by the opponents but the police did not take any steps against them. That, thus, the petitioners were victimised by the opponents.

4.4 It is also stated that the petitioners had filed several Special Criminal Applications before this Court, being Special Criminal Applications No.920 of 2001, 419 of 2002 and 743 of 2002, yet the harassment continued, hence, the petitioners were constrained to file the present petition before this Court.

4.5 In paragraph No.11 of the petition, the petitioners have levelled allegations against various officers of different departments of the government and have submitted that despite applications having been made before different authorities, the said authorities have paid no heed to the same, with a view to please the respondents No.9 to 15.

4.6 It is also stated that the petitioners had also lodged a complaint dated 7.9.2002 before the Human Rights Commission at New Delhi and the Human Rights Commission, by a letter dated 21.10.2003 directed the D.G.P. of Gujarat to take appropriate action and send a report. However as the problems of the petitioners were not solved, the petitioners approached this Court by way of a writ petition being Special Civil Application No.18044 of 2003, which was rejected by a judgement and order dated 26.4.2004. That, being aggrieved by the aforesaid judgement and order the petitioners preferred a Letters Patent Appeal before this Court, being L.P.A. No.1370 of 2004, wherein the Division Bench passed the following order on 5.07.2004:

> "Heard learned counsel Shri Patel for the appellant. From the averments made in the petition as well as the order passed by the learned Single Judge of this Court, it is more than clear that the petition filed by the appellant petitioner before the learned Single Judge of this Court was in the nature of public interest litigation. In that view of the matter, learned counsel Shri Patel seeks permission not only to withdraw this appeal but also the main writ petition with a liberty to file fresh petition, in the nature of public interest litigation, before the appropriate forum.

Permission granted. The appeal is disposed of as withdrawn."

5. Thereafter the petitioner has filed the present Special Civil Application as a public interest litigation seeking the abovementioned reliefs. The Supreme Court in the case of Guruvayoor Devaswom Managing Committee v. C.K. Rajan reported in (2003)7 SCC 546 has summarized the principles evolved by the Supreme Court in respect of public interest litigation. As per the principles evolved by the Supreme Court, the Court in the exercise of powers under Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court. In the facts of the present case, as is evident from the averments made in the petition, the petitioners have approached this Court by way of various petitions in respect of different causes of action, hence, it cannot be said that the petitioners are not in a position to knock the doors of the Court. Moreover, though styled as a public interest litigation, this petition is moved mainly for the purpose of ventilating private grievances, hence, it cannot be said that there is any public interest involved in the present petition.

5.1 No fault can be found on the part of the petitioner, for filing the present petition in the form of a Public Interest Litigation, however, as stated above upon perusal of the facts of the case, it does not appear as if any public interest is involved in the present petition. The petitioners 13 in all, are members of the same family and are seeking various reliefs in pursuance of claims made by them before various authorities vide different applications under different government resolutions.

4.2 By an order dated 9th August, 2004 passed in the present petition, this Court had issued the following directions:

"Notice. Collector, Gandhinagar will inquire into this matter, hear the parties and file report; also point out the measures taken / being taken with regard to the grievances of the petitioners. Report by the Collector and reply by the respondents be filed on August 31, 2004. List on September 3, 2004."

5.3 Pursuant to the aforesaid directions, the

Collector, Gandhinagar submitted a report wherein it is stated that he had called the petitioner Shri Sureshbhai Mangalbhai Valmiki, and his brothers Amrutbhai Mangalbhai Valmiki and Rameshbhai Mangalbhai Valmiki at the Collectorate on 27.7.2004 and heard them personally. The representations made by the petitioner in respect of their grievances are enumerated in the said report and the actions taken in respect thereof till the said date are also set out in the said report.

5.4 Thereafter, the Collector, Gandhinagar has also filed a detailed affidavit in reply dated 7th February, 2005 dealing with the averments made in the petition. On behalf of the petitioner Sangh an Affidavit in rejoinder dated 7.3.2005 has been filed. The petitioners have annexed various government resolutions along with the rejoinder affidavit, which form the basis for the claims made by them.

6. Mr. Muktesh Patel, learned Advocate appearing on behalf of the petitioners has argued at length. He has referred to the various averments made in the petition and the Affidavit in rejoinder as well as the various representations made by the petitioners and pointed out the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Reliance was also placed upon the resolution of the Social Justice and Empowerment Department, Government of Gujarat, dated 12.12.2001 which provides for sanctioning aid to Scheduled Caste families of Chitrodipura and Visnagar for the purpose of constructing houses as a special case under a contingent scheme, as well as the Social Welfare Department, Government of Gujarat, resolutions dated 2.4.1997 and 21.3.1998 which provide for the power to declare incidents of Social boycott and migration of Scheduled Tribes; and for increase in the financial aid being given to the Scheduled Caste in cases of social boycott, migration and other calamities, respectively. Learned Counsel also relied upon the resolution dated 18.3.1998 of the Social Welfare and Scheduled Caste Department, which provides for sanctioning of a Special Contingency Plan for the implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Protection of Civil Rights Act, 1955 with special reference to clauses 3, 4, 6, 7, 13, 14 and 17 thereof. Since most of the arguments urged by the learned Counsel are also reproduced by way of averments made in the petition, it is not necessary to set them out again.

6.1 The burden of the arguments urged by the learned Counsel is that the petitioners are in pitiable condition and have been subjected to great harassment and should be granted the reliefs prayed for.

7. Mr. Uday R. Bhatt, learned Assistant Government Pleader appearing on behalf of the respondents No.1 to 8 relied upon the affidavit in reply filed by the Collector, Gandhinagar and submitted that the State authorities had taken all steps to help the petitioners however, it is the petitioners who are not co-operating. Learned A.G.P. submitted that the administration was and is always ready and willing to extend all help to the petitioners, in accordance with law.

8. Upon perusal of the record, and more particularly, the report submitted by the Collector, the principal grievances/demands of the petitioners are as follows:

"(1) Even if the petitioners are provided with police protection, they are not in a position to go to their native village at Kotha.

(2) That Sonalben Babubhai Valmiki should be admitted to a government school at Gandhinagar.

(3) That they should be given full compensation for three houses which were completely gutted down after they were set on fire,

(4) That the petitioners should be declared as displaced persons and be given benefits to which displaced persons are entitled,

(5) That the police should conduct an impartial investigation and upon completion of the said investigation, a charge sheet should be submitted against the opponents,

(6) That an impartial investigation be carried out in respect of the complaint lodged against Shri Sureshbhai Valmiki,

(7) That a judicial inquiry be carried out in respect of the atrocity cases lodged by the petitioner and a charge sheet be submitted in the court."

8.1 As per the said report, the petitioners had been provided with police protection even at their residence. That, a meeting was held between the members of the Valmiki family, the village people and the district

administration to ensure peace and harmony in the village. The meeting was held on 9.8.2002 at Gram Panchayat, Kotha wherein the Prant officer, the Social Welfare Officer, Gandhinagar, the Vigilance Officer, Ahmedabad, the Mamlatdar, Kalol, the Taluka Development Officer, Kalol, the Sarpanch, Gram Panchayat, Kotha , the Police Inspector, Kalol, representatives of the petitioners and others has remained present and active efforts were made to redress the grievances of the petitioners. Perusal of the minutes of the said meeting which are annexed to the said report shows that the authorities had offered to provide various amenities and other assistance to the petitioners. However, it is the case of the district administration as stated in the said report, that the petitioners have not extended their co-operation in this regard. It is stated that the petitioners are not ready to go back to their native village, hence, they could not be rehabilitated.

8.2 As regards the claim for compensation in respect of the houses of the petitioners which had been gutted down, it is stated that since it has not been established as to who committed the crime, no charge sheet has been filed and hence, the requirements of the government resolution dated 18.10.95 are not fulfilled. As regards the claim towards the loss or damage suffered by the petitioners, it is stated that a survey was carried out by the Gram Panchayat and the damage was assessed at Rs.900/- but the petitioners refused to accept the same. It is also stated that the petitioners had claimed an amount of Rs.60,000/- towards various items lost or damaged, however, the said claims could not be substantiated.

8.3 As regards the demand to declare the petitioners as displaced persons, it is stated that the procedure to declare the members of Scheduled castes as socially boycotted and displaced is laid down in the Social Welfare Department, Government Resolution No. SCW/1097/2153/H dated 2.4.1997. It is further stated that the District backward Class Welfare Officer is empowered to declare a person as socially boycotted or displaced on the basis of a report submitted by the District Superintendent of Police. That as per the report of the Police Superintendent, it is not established that the petitioners were socially boycotted, hence, there is no question of declaring the petitioners as displaced persons and giving them benefits as such.

8.4 As regards the demand for a just and impartial investigation into the cases lodged by and against the

petitioners, it is stated that a just, objective and detailed investigation has been carried out with regard to the complaints lodged by the petitioner. Details regarding the investigation carried out are set out in the report. The ultimate say of the authorities is that the government machinery has shown a positive attitude in this regard to ensure that the petitioner gets all the benefits as per the provisions made in this regard by the government, within the permissible limit. That the District Administration expects a positive attitude and co-operation from the petitioners in order to restore peaceful and harmonious atmosphere between the petitioners and the village people.

9. This matter was heard at length on 29.3.2005 and 30.3.2005. On 30.3.2005, the learned Assistant Government Pleader was directed to ask the Collector, Gandhinagar to make appropriate arrangements for the education of Sonalben Valmiki and to report to the Court by 7th April, 2005. Accordingly pursuant to a communication by the concerned Assistant Government Pleader in this regard, the Collector, Gandhinagar has submitted a report by way of an affidavit dated 6th April, 2005.

9.1 It is stated in the said report that the concerned girl Sonalben has been admitted in Bal Sanskar Kendra, Ashram Shala Pethapur, Tal. District Gandhinagar which is very near to Gandhinagar city. That, the school provides free lodging and boarding facilities and study facilities for students belonging to Scheduled Castes. That, the girl has been admitted in Std.VI and the Principal of the school has been requested to give appropriate guidance to the student concerned, and the Principal has agreed to do so. That, pursuant to the said arrangement a letter was received from Taraben B. Valmiki, (Sonalben's mother), expressing satisfaction with regard to the arrangements made. Documents in support of the affidavit are also annexed thereto.

10. Upon perusal of the affidavit filed by the Collector, it is found that the directions given by this Court have been complied with in letter and spirit. The State Government has established its bonafides to the satisfaction of this Court.

11. From the record of the petition, it is clear that the same involves disputed questions of fact, which cannot be decided by this Court in a petition under Article 226 of the Constitution of India.

12. As regards the claims of the petitioner, insofar as the demand regarding admitting Sonalben in a school at Gandhinagar, the same no longer survives in view of the afore stated facts.

12.1 As regards the demand to be declared as socially boycotted and displaced persons and be given benefits accordingly, from the facts emerging from the record, it appears that the petitioners do not fulfil the requirements for being declared as socially boycotted and displaced persons as laid down in the government resolution dated 2.4 1997. Under the provisions of the said government resolution, as and when there is an occasion of Scheduled Castes being socially boycotted or displaced, the decision to declare the said occasion as 'displacement or social boycott' is to be taken by the District Backward Class Welfare Officer after personally inquiring into the incident and after obtaining a report from the District Superintendent of Police. It is only after such a declaration is made by the said officer, that steps are to be taken for granting financial benefits in accordance with the rules. As per the report of the Police Commissioner, the petitioners have neither been boycotted nor have they been harassed and that even the Harijan members of Kotha village do not support the allegations made by the petitioners. However, it is for the District Backward Class Welfare Officer to take a decision in this regard. Nothing has been placed on record to show as to whether the said officer has inquired into the matter or has taken any decision after receipt of the report of the District Superintendent of Police.

12.2 As regards the other demands/prayers made by the petitioners, it is stated on behalf of the respondent State authorities that they are ready and willing to render all help within permissible limits to the petitioners. The Court is satisfied that if the petitioners approach the concerned authorities in respect of their independent grievances, under the various government resolutions upon which they have placed reliance, the concerned authority would look into the same and decide the same expeditiously, in accordance with law.

12.3 Moreover, as can be seen from the minutes of the meeting dated 9.8.2002, the District Administration as well as the Gram Panchayat have offered various reliefs to the petitioners, including providing various amenities. If the petitioners agree to return to their native village, the grant of reliefs as per the

settlement proposed therein could still be considered.

13. Upon perusal of the entire record of the present petition, and more particularly the various letters addressed by the petitioners to the different authorities it appears that all along the petitioners have been making representations and lodging criminal complaints in respect of the alleged harassment meted out to them. The petitioners do not appear to have made any application under any of the Government resolutions on which reliance has been placed by them. In Special Criminal Application No.743 of 2002, filed by the petitioner Sangh the following reliefs had been prayed for:

"(A) To admit this petition.

(B) To order the Respondent 1 to 3 Hejrati - migrated persons from the date 5/10/2001 to onwards.

(C) To pay the damage amount to the scheme of Government as persons as per the same scheme of Government as mentioned in para No.7 & 8.

(D) To take actions u/s 4 of the SC/ST Prevention of Atrocity Act against the respondents No.1 to 8 for their negligence.

(E) To pass the strictures against the respondents No.2 to 8 for their negligence towards their duty.

(F) To grant any relief deemed fit in the circumstances."

As can be seen the reliefs prayed for vide paragraphs (B) and (C) are comparable to reliefs prayed for vide praragraphs 16(c) and (d) of the present petition. Whereas the reliefs prayed for vide paragraphs (D) and (E) are identically worded to the reliefs prayed for vide praragraphs 16(g) and (h) of the present petition.

Special Criminal Application No.743 of 2002 was dismissed by an order dated 11.11.2003 wherein this Court had observed as follows:

"3. Considering the prayers at Serial Nos. (B) and (C), the same cannot be granted in these proceedings. For the said reliefs, the

> petitioner can approach the appropriate authority by making necessary application. So far relief prayed for in clause (D) is concerned, the petitioner can always approach either the police or the appropriate forum provided under the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, (for short "the Act"). Mr.Patel submits that despite the fact that the police has been approached by the petitioner by way of filing a complaint in relation to the incident regarding arson, etc. whereby their residential houses have been destroyed, no effective investigation is still made by the concerned police. If the petitioner dissatisfied with the investigation, it is open for him to file appropriate proceedings before the concerned Court against the persons responsible by filing complaint for offence made punishable u/s 4 of the Act. It is made clear that if such a complaint is filed by the petitioner, the concerned court may, without being influenced by the fact that the incident took place on 4th October 2003, may deal with the complaint on its merits and decide the same. Relief prayed for in clause (E) is entirely dependent on the outcome of the complaint that may be filed by the petitioner. It, therefore, cannot be granted in this petition. With these observations, this petition is dismissed. Notice is discharged."

14. The aforesaid decision was rendered on 11th November, 2003, thereafter, it appears that instead of approaching the appropriate authority by making necessary application, the petitioner Sangh approached this Court by way of a writ petition, being Special Civil Application No.18044 of 2003, praying for almost identical reliefs. As already stated hereinabove, the said petition was rejected by a judgment and order dated 26th April, 2004. However, by a judgment and order dated 5.7.2004, passed in Letters Patent Appeal No.1370 of 2004 wherein the said judgment and order was subject matter of challenge, the petitioner was permitted to withdraw both the Special Civil Application as well as the Letters Patent Appeal.

15. Thus, it is apparent that insofar as the prayers sought vide paragraph 16 (g) and (h) of the petition are concerned, the same stand concluded by the order dated 11.11.2003 passed in the aforesaid Special Criminal Application, hence, it is not open to the petitioner to

re-agitate the same.

15.1 The relief sought for vide para 16(a) is formal in nature. Relief prayed for vide paragraphe 16(b) is too general in nature and as such it is not possible for this Court to grant the same. The reliefs prayed for vide paragraph 16(c), (e) and (f) would all be consequential to a declaration by the District Backward Class Officer, declaring that the petitioners are socially boycotted or displaced persons under the provisions of the government resolution dated 2.4.1997. However, in absence of any such declaration, no such relief can be granted. The relief prayed for vide paragraph 16 (i) would involve disputed questions of fact which cannot be dealt with in the petition under Article 226 of the Constitution of India. Vide para 16 (d) the petitioner has sought payment of damages to the victims under the schemes of the government as demanded in para no.8 of the petition, however, the petitioners do not appear to have made any application before the concerned authorities in respect of the same.

16. In the circumstances, keeping in view the fact that the State Government has established its bonafides and the authorities have shown their willingness to render assistance to the petitioners within permissible limits, the ends of justice would be served if the petitioners are permitted to make appropriate applications before the concerned authorities, in connection with the reliefs prayed for in the petition within a period of 4 weeks from today. Upon receipt of such applications, the concerned authorities will decide the same in accordance with law, as expeditiously as possible, and preferably within a period of 8 weeks from the date of receipt of such applications. Needless to state that nothing stated in this order shall prejudice the rights of the petitioners, while deciding the said applications.

17. Subject to the aforesaid directions, the petition is rejected. Notice discharged. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

parmar*